

COURT FACILITIES DISPUTE RESOLUTION COMMITTEE

March 24, 2009

MINUTES

COMMITTEE MEMBERS PRESENT:

Ms. Karen Finn, Representative of the Department of Finance
Justice Ron Robie, Representative of the Judicial Council
Supervisor John Tavaglione, Representative of the California State Association of Counties

PRESENTERS:

Clifford Ham, Principal Architect, Office of Court Construction and Management, Administrative
Office of the Courts, Judicial Council
Michelle Marlo, Outside Counsel for the Administrative Office of the Courts, Partner-Alston and Bird, LLP
Stephen Dunivent, Deputy County Executive Officer, Orange County
Roger Freeman, Senior Deputy County Counsel, Orange County

OTHERS PRESENT:

Elizabeth Howard, California State Association of Counties
Greg Rogers, Assistant Program Budget Manager, Department of Finance
Jennifer Osborn, Principal Program Budget Analyst, Department of Finance
Madelynn McClain, Budget Analyst, Department of Finance

CALL TO ORDER AND ROLL CALL:

Ms. Jennifer Osborn, Department of Finance, called the meeting to order at 9:00 a.m. and called the roll. A quorum was established.

APPROVAL OF THE MINUTES:

Ms. Karen Finn stated that the first item of business was the approval of the minutes from the January 28, 2009, meeting.

A motion was made by Supervisor Tavaglione and Second by Justice Robie to approve the minutes from the January 28, 2009, meeting.

The minutes were approved by a 3-0 vote.

ACTION ITEM:

Ms. Osborn noted that our next item was the Administrative Office of the Courts (AOC) initiated dispute on the Failure to Reach an Agreement on the transfer for the Central Justice Center, known as CXC, located in Orange County.

Mr. Clifford Ham, Principal Architect, the Administrative Office of the Courts introduced himself and Michelle Marlo, outside counsel for the Administrative Office of the Courts. Ms. Marlo stated that the AOC was seeking a determination from the Committee as to the transfer of the facility known as CXC in Orange County. They are also asking that the County provide a County Facility Payment for this facility. Mr. Ham gave a brief description of the facility. It was designed as a complex civil litigation center designed for multiple litigants. It was constructed by the County and included collaboration with the Superior Court. Approximately \$2 million was spent on the facility. It has 5 courtrooms and was occupied in 2001. Ms. Marlo stated that it is a 100% exclusive use court facility. In 2007, during the transfer negotiations, the County stated that the CXC was not subject to transfer. The County stated that this facility was temporary space to hold the court while the County renovated the Central Justice Center. The County asserted to the AOC that the AOC knew the facility was temporary space. Court personnel have noted that they were not aware that space was considered temporary. Ms. Marlo noted that when the legislation was enacted, the AOC went to all counties to determine which court facilities

would be eligible for transfer. The County never asked for the CXC to be exempted from transfer. The County has offered to sell the court to the AOC at fair market value or lease it back to the AOC.

Mr. Steve Dunivent, Deputy County Executive Officer, Orange County introduced himself and Mr. Roger Freeman, Senior Deputy County Counsel, Orange County. Mr. Dunivent noted had various visual aides that he would use during his presentation. The County embarked on a major renovation project on the 11-story tower, the Central Justice Center Tower, which was built in the 1960s. They have spent \$25 million on the project and include replacement of the HVAC systems, the air flow, addressing the fire sprinklers, updated lighting and seating, as well as cosmetic improvements. The project moves floor by floor, starting on the 11th floor. Each floor is very similar in layout and contains 5 courtrooms. The plan was to move the 11th floor to temporary space in another building and begin the renovation project on the 11th floor. The temporary space was previously used as a Federal Courthouse, which contained 3 courtrooms. The facility was offered to the County after the Federal Courthouse moved to the new Ronald Regan Building. The County had to increase the number of courtrooms in the Federal building from 3 to 5. The plan was that as floors were completed in the central tower, for example, the 11th floor was completed; they moved the 10th floor to the 11th floor and began renovation on the 10th floor. The County is in progress on the 5th floor. Once the 4th floor is completed, as originally contemplated, the AOC would move from the CXC facility back into the Central Towers. Mr. Dunivent stated that the plan, as agreed to by the OC Superior Court, was for the OC Superior Court to move back into the Central Tower once the CJC was completed.

Justice Robie asked if the square footage and other relevant factors are the same as a floor in the Central Tower. Mr. Dunivent stated that the furniture was larger in the CXC and that there was duplicative square footage in terms of jury assembly rooms, and office space, etc. Mr. Ham stated that the square footage is 13,000 square feet (sf) while the CXC is 31,000 sf, roughly 65% the size of the CXC. Justice Robie asked if the AOC believes that they could move the operations from the CXC to one floor of the Central Tower. Ms. Marlo said no, it does not accommodate what functions take place at the CXC. Mr. Ham said that for a complex civil litigation courtroom, the standard is 2,100 sf. For a typical trial courtroom, the standard is approximately 1,600 sf. Ms. Marlo stated that some of the special features of the CXC, like the wiring, were not included in renovation of the Central Tower. Supervisor Tavaglione stated that he believed that the County had intended to make this temporary space. On the June 20, 2000, document to the County Board of Supervisors, it states, "The contract will provide for the remodel of the former Federal Modular Court Facility to create five courtrooms. This will provide space necessary to vacate five (5) courtrooms for the 11th floor of the Central Justice Center during construction work." Supervisor Tavaglione asked when the County received ownership of the CXC facility and what was the future purpose of the facility. Mr. Dunivent responded that they received title to the facility in 1999 and that they already owned the land, which was purchased over 60 years prior. It was to be used for expansion of county services like a re-entry facility. Supervisor Tavaglione asked if the Court does not move back into the space, what happens with it? Mr. Dunivent stated that the County could backfill it but that was not a desired option.

Justice Robie asked about the term temporary, does the law distinguish between temporary and non-temporary facilities? It is a court facility now and when it was opened and the law covers the transfer of court facilities. Ms. Marlo stated that the act is clear that it states that all court facilities are to be transferred to the state and defines court facilities. Ms. Marlo gave a brief description of the act and definition of the court facilities. Justice Robie stated that the dispute was over whether the facility was temporary or not. He stated that the facility was always used as a court facility and the issue of it being temporary is not the jurisdiction of the Committee. Mr. Roger Freeman stated that the County takes the position that the act states that the County is only responsible to provide facilities for the judges and operations that were in effect as of July 1, 1996. Justice Robie disagreed with this position and that doesn't control what is a building. Mr. Freeman stated that it was a baseline and the County is not required to provide additional space above that baseline. The extra space in the Central Tower, if the AOC stays in the CXC, would be above and beyond the baseline. There was discussion between the members and presenters regarding the nature of the facility, whether or not it was temporary, and if it should be transferred.

Mr. Freeman stated that the AOC would be getting a windfall of space and land. The property is valued at \$15 million and they get the CXC facility with 5 additional courtrooms. Justice Robie stated that the parties could work out the terms of the agreement to make it fair and equitable. Ms. Marlo disagreed with the statement that the AOC would get a windfall of land and space. She gave a brief description of the concept of fiscal neutrality as stated in their rebuttal documents. Justice Robie asked if there was a way to incorporate into the agreement the concept that if the AOC no longer used or needed the facility, could they provide that they would give it back to the County. Is that legally possible? Ms. Marlo stated that it would depend on if they had a typical transfer of title, which is what they were asking for, they could provide for a right of repurchase for the County if the AOC no longer used the facility. Ms. Finn stated that in some of the documents that there are spaces that they are in temporary facilities that the AOC signed vacant space memo. Ms. Finn asked why the CXC facility was not included in this type of memo. Mr. Dunivent replied that both the County and AOC were aware that this space was considered temporary so it wasn't necessary to sign a vacant space memo. The County is providing the CXC space to the AOC at no cost. Ms. Finn asked if the County had documentation stating that both parties knew that the facility was considered temporary space. Mr. Dunivent replied that they had quotes from various documents and emails that backed their position: (1) The Court CEO, Alan Slater, in an email dated December 23, 1998, wrote, "Our position is: Government Code Section 68073 requires the County to provide these courtrooms with the same basic configuration and capacity we have on the 11th floor."; and (2) The Court CEO, Alan Slater, in an email dated December 22, 1998, wrote, "It is our opinion that the County is responsible for this infrastructure cost because the County is conducting a capital project to rehabilitate and renovate the existing facilities in the Central Courthouse that are deficient and not to create additional courtroom space for the court." Additionally, in the August 2000 facilities master plan included the following statement, "Also, at the time of the survey, the County was in the process of acquiring the modular structure adjacent to the Central Courthouse and converting it to five civil classrooms as a complex litigation center. The primary intent of this conversion is to provide swing space to accommodate the renovation of the existing Central Courthouse Tower on a floor-by-floor basis. This resource was not included in the Inventory as a current resource, but rather addressed as part of the options." Mr. Dunivent noted that in the AOC's documents, they discounted the 2000 study and used the 2003 facilities master plan. However, both documents indicated that both the AOC and the County understood the facility to be temporary, stated in the 2003 document as, "Not a long-term court resource."; and "Continue use as-is in short term; Consider consolidation in the future."

Supervisor Tavaglione asked what the renovation project of the Central Tower consisted of. Mr. Dunivent gave a brief description of the renovation. Supervisor Tavaglione then asked if the AOC would re-occupy the Central Tower when the renovation was complete. Mr. Ham said that they would continue to use it as a criminal courthouse. Supervisor Tavaglione stated that the AOC would end up with additional courtrooms after the renovation is completed and asked what the value of the land is. Mr. Dunivent stated approximately \$9 million for the land only. Mr. Ham said that there was no plan to move the CXC operations back to the Central Tower. Justice Robie stated that once the renovation was completed and the AOC occupied all 11 floors, they would end up with 5 additional courtrooms, and would have to compensate the County in some manner. There was discussion regarding dealing with both court facilities at the same time with the same transfer. Supervisor Tavaglione asked about how the AOC would calculate the CFP for the facility since it wasn't occupied during the calculation period. Ms. Marlo said that the law allowed for alternative calculations and that the AOC would work with the County to determine a fair CFP.

Supervisor Tavaglione noted that the Legislation did not intend for the Committee to require one party to accept or transfer a facility against their will. Ms. Marlow stated that Government Code Section 70333 allowed for the Committee to make that decision. GCS 70333 states, "If the Judicial Council and the county fail to reach agreement on any facility, each shall present its position to the Court Facilities Dispute Resolution Committee which shall render its determination concerning that transfer of responsibility for that facility." Justice Robie noted that the AOC was asking the Committee to determine whether or not the CXC was a court facility. The terms of the transfer would be a separate issue. He did not want to set precedent by determining whether or not the facility was temporary and therefore not considered a court facility. Ms. Finn asked what the status of all the facilities in this county in terms of transferred facilities. Ms. Marlo stated that there were 8 facilities in this County and none had transferred

yet. There was a discussion regarding why these facilities weren't grouped together and considered as one transfer. These facilities are interrelated and should be considered to be transferred as a package. Mr. Ham stated that the AOC and County have been working on the terms of transfer for all 8 facilities for the last year and a half and that the County requested that the CXC be dealt with separately.

Mr. Dunivent stated that the County made several attempts to consolidate all the facilities into one transfer request. He also stated that the CFP for the Central Tower has already been established according to the law and included the square footage for all 11 floors and older mechanical and electrical systems. Justice Robie stated that the CFP request goes to the terms of transfer and that should be discussed in a separate meeting, if necessary. It would have to be recalculated accordingly. He also advised that any agreement should contain a reversionary clause that allows the AOC to give the building and land back to the County should they have no further use of the facility.

Supervisor Tavaglione noted that there was adequate documentation stating that the CXC was considered temporary. He was willing to say that the CXC was a temporary court facility and that it adds five additional courtrooms from the original intent. He noted that the County and AOC should go back to work it out because there is a value to the temporary facility and the AOC should compensate the County for the five additional courtrooms. Ms. Marlo asked if there was any documentation that the AOC would return to the Central Tower. Supervisor Tavaglione said no. While he believed that the space was temporary, it was a court facility.

Supervisor Tavaglione said he was willing to make a motion that states that the Committee recognizes that the CXC, based on documentation, is a court facility, albeit temporary. It is a court facility, subject to the provisions of the act, albeit temporary. He stated that the Committee is directing the parties to work together to on the terms of the transfer for these facilities with a good faith effort and that the value of additional space needs to be negotiated. Ms. Finn noted that per the act, the terms can include space in another facility; it did not necessarily have to be the space in the CXC. They could find replacement or comparable space. Supervisor Tavaglione asked if the Committee can force any party to transfer a facility. Justice Robie stated that the Committee is charged with interpreting the law to say that this is a court facility and we can't force them to transfer. Ms. Finn also commented that the she didn't think the original Task Force on Court Facilities contemplated forcing any facility transfer. Further, Justice Robie said that the AOC and the County should work out a fair and equitable transfer. Justice Robie stated that there were various items that were requested in the AOC request, but we can modify the request to only approve one item to recognize that the CXC is a court facility.

A motion was made by Supervisor Tavaglione and Second by Justice Robie to recommend approval of the modified request by the Administrative Office of the Courts to recognize that the Central Justice Center, CXC, is a court facility, albeit temporary, and subject to the act in terms of transfer to the Director of the Department of Finance.

The amended appeal for the Administrative Office of the Courts was recommended for approval by a 3-0 vote.

AYES: Karen Finn
Justice Robie
Supervisor Tavaglione

NOES: None

ABSTAIN: None

There were no comments or questions from the public before conclusion.

OTHER BUSINESS:

Ms. Osborn reported that there was no other business.

NEXT MEETING:

Ms. Osborn noted that the next meeting was scheduled for April 8, 2009, at 9:00 a.m. in Room 3191.

Ms. Finn concluded the meeting at 10:45 a.m.